

KIMMEL & SILVERMAN  
P.C.

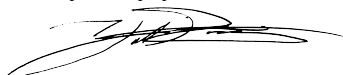
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- What was the specific request or requests made by Flatiron to HasTraffic?
- Did Flatiron issue a preservation letter/directive and/or take other steps to implement a litigation hold, as to its former business partner, HasTraffic?<sup>1</sup>
- What did Flatiron do to ensure compliance with any such litigation hold?
- Did HasTraffic comply with any litigation hold directives from Flatiron?
- How did HasTraffic respond to the litigation hold and/or any preservation directive/letter?
- Did HasTraffic expressly refuse to produce the text messages to Flatiron?
- If so, when and how?
- If HasTraffic expressly refused to produce the text messages to Flatiron, what was the specific reason it offered for refusing to produce the records?
- When did the “contractual relationship” between Flatiron and HasTraffic (referred to in Mr. Jhaveri’s declaration) end?

Notably, Flatiron has an obligation to produce records not only within its possession or direct custody, but also those within its control.<sup>2</sup> As Flatiron’s declaration makes clear, HasTraffic and Flatiron had a contractual relationship and text messages were sent on Flatiron’s behalf pursuant to that contract. As such, Flatiron has an obligation to produce those records to Plaintiffs after Plaintiffs served document requests seeking such documents.

Plaintiffs request the Court require Flatiron to provide a supplemental sworn declaration answering the questions listed above with specificity. We are appreciative of the Court’s time and attention.

Very truly yours,



JACOB U. GINSBURG

cc: all parties of record (via ECF)

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<sup>1</sup> “[O]nce a party reasonably anticipates litigation, it must suspend its routine document retention/destruction policy and put in place a ‘litigation hold’ to ensure the preservation of relevant documents.” *Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212, 218 (S.D.N.Y. 2003).

<sup>2</sup> A party who contracts with a vendor to telemarket on its behalf has an obligation to assure the vendor retains and makes records of those calls accessible when a litigation hold is in effect. *Perrong v. Sperian Energy Corp.*, No. 2:19-cv-00115-RFB-EJY, 2020 U.S. Dist. LEXIS 10749, at \*10 (D. Nev. Jan. 17, 2020) (“Calling records in this TCPA case are obviously records that any entity who is a party to this case must have known had to be preserved.”)